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3. Carriers (§ 315*)—Evidence—Variance—Use of Videlicet.—In an action against a carrier by a passenger for injury while alighting from a train, where the declaration alleged that the passenger "was compelled to step down from the car a great distance to the ground, to wit, two feet," evidence that the distance was between 26 and 34 inches was not so different from the allegation as to require the court to strike it out on the ground of variance.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1281; Dec. Dig. § 315.* 11 Va.-W. Va. Enc. Dig. 244, 245.]

4. Carriers (§ 317*)—Injuries to Passengers—Actions—Evidence—Admissibility.—In an action for injuries received by a passenger in alighting from a train at a station where there was no platform, evidence tending to show how the accommodations at this station compared as to safety with other stations, and thus show lack of care on the part of the carrier in failing to furnish proper accommodations, was admissible.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1295-1306; Dec. Dig. § 317.* 2 Va.-W. Va. Enc. Dig. 725, 726.]

5. Evidence (§ 155*)—Evidence Admissible Because of the Admission of Other Evidence.—In an action by a passenger for injuries received while alighting from a train at a station, where there was no platform, the defendant having introduced evidence comparing the accommodations at this station with those of other stations cannot complain that the passenger introduced other evidence along the same line.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 445-458; Dec. Dig. § 155.* 2 Va.-W. Va. Enc. Dig. 725, 726.]

Error to Circuit Court, Botetourt County.

Action by Maggie E. Barger against the Chesapeake & Ohio Railway Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

R. L. Parrish, for the plaintiff in error.

R. Haden Penn, A. P. Staples, Jr. and A. B. Hunt, for the defendant in error.

CARDWELL, J., absent.

FERRIMER v. COMMONWEALTH.

Nov. 16, 1911.

[72 S. E. 699.]

1. Indictment and Information (§ 110*)—Following Statute—Sufficiency—Intoxicating Liquors.—The indictment alleged that accused, on a certain date, upon the order of V., did unlawfully sell,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

in the town and county named, to said V. a quantity of ardent spirits, not exceeding 4½ gallons, and that said spirits was unlawfully sold, not to be delivered at the place of purchase, or within the town, or within one mile outside of the corporate limits thereof, but that accused unlawfully shipped such ardent spirits by express to V., without then and there having a license to do so. Held, that the indictment was sufficient, being laid in the language of the statute.

[Ed. Note.—For other cases, see Indictment and Information, Dec. Dig. § 110.* 7 Va.-W. Va. Enc. Dig. 413-414; id. 418.]

2. Intoxicating Liquors (§ 6*)—Regulation—Police Power.—Under its police power to enact laws to promote the public safety, health, and morals, the Legislature may regulate and control traffic in intoxicating liquors.

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. § 4; Dec. Dig. § 6.* 8 Va.-W. Va. Enc. Dig. 6.]

3. Commerce (§ 63*)—Intoxicating Liquors—Regulations.—Acts 1910, c. 190, authorized the issuance of a retail license and a retail and shipper's license, for the sale of intoxicants, and provides that a retail license shall permit the sale of intoxicants to any individual, to be delivered at the place of purchase, or to any place within the city, town, county, or district, or within one mile outside of where the license is granted, and nowhere else within the state, and that the retail and shipper's license shall confer the additional privilege of shipping by express or otherwise. Held, that the Legislature had power to regulate the sale of liquor by the imposition of a reasonable license, even though it be intended for shipment without the state, and the statute was valid though construed as prohibiting one merely having a retail license from shipping liquor without the state.

[Ed. Note.—For other cases, see Commerce, Dec. Dig. § 63.* 14 Va.-W. Va. Enc. Dig. 581.]

Error to Circuit Court, Tazewell County.

H. J. Ferrimer was convicted of unlawfully selling intoxicants, and brings error. Affirmed.

Sexton & Roberts, for the plaintiff in error.

Attorney-General Samuel W. Williams, for the commonwealth.

STULL et al. v. HARVEY et al.

Nov. 16, 1911.

[72 S. E. 701.]

1. Appeal and Error (§ 100*)—Judgments Appealable—"Final Decree."—In a suit to restrain a sale of property under a trust deed, a decree directing the clerk to pay the trustee's attorneys a fee out

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.